

Appln. No. 10/804,209  
Docket No. 000242.00171 (8625)/GPP-0004

### REMARKS

Claims 1-8, 10-22 and 27 are pending in the Application. Claims 15-21 were previously withdrawn. Claims 1-8 and 10-14 are allowed. Claims 22 and 27 stand rejected. Applicant has cancelled Claims 15-21 and provides clarifying remarks regarding Claims 22 and 27, leaving Claims 1-8, 10-14, 22 and 27 for further consideration upon entry of the present Amendment.

Applicants respectfully request that these amendments be entered because they 1) do not raise new issues that would require further consideration and/or search; 2) they do not raise issue of new matter; 3) no new claims have been added; and 4) the amendments place the claims in a better condition for allowance.

Reconsideration and allowance of the claims are respectfully requested in view of the above amendments and the following remarks.

#### Claim Rejection Under 35 U.S.C. § 103(a)

Claims 22 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Ingalls (US 2003/0132275, hereinafter Ingalls) in view of Heaps, Jr. et al (US 4,850,506, hereinafter Heaps), Ballard (US 4,226,327, hereinafter Ballard) and Wilson (US 5,261,536, hereinafter Wilson).

Applicant overcomes this rejection for the following reasons.

Applicant respectfully submits that the obviousness rejection based on the References is improper as the References fail to teach or suggest each and every element of the instant invention in such a manner as to perform as the claimed invention performs. For an obviousness rejection to be proper, the Examiner must meet the burden of establishing a prima facie case of obviousness. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). The Examiner must meet the burden of establishing that all elements of the invention are taught or suggested in the prior art. MPEP §2143.03.

Additionally, if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). MPEP 2143.01.

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The Office action acknowledges that Ingalls is deficient in anticipating several limitations of the claimed invention, and looks to at least Heaps, Ballard and Wilson to cure these deficiencies.

Regarding to Claim 22, the Examiner alleges that it would be obvious to modify Ingalls by applying the teachings of Heaps (teaching straps in tension), that it would further be obvious to modify modified Ingalls by applying the teachings of Ballard (teaching reinforcing film instead of straps), that it would further be obvious to modify modified Ingalls by applying the teachings of Wilson (teaching stretch films), and that it would be further obvious to modify modified Ingalls by applying routine knowledge of known material properties (alleged to teach a wrap tension of at least four pounds per foot).

Regarding Claim 27, the Examiner further alleges that it would further be obvious to modify modified Ingalls by applying the teachings of Wilson (teaching film stretch of at least 200%).

Applicant respectfully disagrees that there is a nexus within and between the prior art itself to arrive at the claimed invention.

For example, Applicant finds Ingalls to be concerned with providing a corrugated container having a drain fitment where the container can be easily knocked down for storage or shipment (para. [0008]). As such, if Ingalls were to be modified by applying the teachings of Heaps to include tension straps, and then modified by applying the teachings of Ballard to replace the Heaps tension straps with reinforcing film, and then modified by applying the teachings of Wilson to replace the Ballard reinforcing film with stretched film, and then modified by alleged routine knowledge to produce a wrap tension of at least four pounds per foot, Applicant submits that the modified Ingalls would now include walls under tension that would be wholly unsuitable for its intended purpose of providing a corrugated container having an accessible drain fitment (now covered with stretched film) that can be easily knocked down (the stretched film would produce a spring back force to open the knocked down container. See Ingalls, para. 0004 discussing negative aspects of spring back).

In considering the teachings of the prior art references relied upon in view of the claimed invention as a whole, Applicant finds absolutely no justifiable interconnection or

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relationship between the elements being combined, and thus no proper reasoning that reasonably justifies the combining of the elements in the manner claimed. Accordingly, Applicant submits that a prima facie case of obviousness cannot be established.

Regarding Claim 22 more specifically

Claim 22 recites, inter alia:

“...a polymer material wrapped around the outside of the sidewalls wherein the polymer material is in a stressed condition and is wrapped around the outside of the sidewalls with a wrap tension at least about four pounds per foot.”

The Examiner alleges obviousness of the limitation directed to “a wrap tension at least four pounds per foot” by reasoning that such a wrap tension is a matter of routine knowledge of the known material properties, but offers no basis for such a tension as no examples are given of where such “known material properties” are known in the prior art relied upon. Accordingly, a prima facie case of obviousness cannot be established.

In view of the foregoing, Applicant submits that the References fail to teach or suggest each and every element of the claimed invention and are therefore wholly inadequate in their teaching of the claimed invention as a whole, fail to motivate one skilled in the art to do what the patent Applicant has done, fail to recognize a problem recognized and solved only by the present invention (lightweight and high strength stackable container), fail to offer any reasonable expectation of success in combining the References to perform as the claimed invention performs (tensioned film wrap produces forces on a container that are counter to a knock down container arrangement), fail to teach a modification to prior art that does not render the prior art being modified unsatisfactory for its intended purpose (the intent of Ingalls is to provide a container that is easily knocked down, contrary to the inherent structure of the claimed invention having tensioned sidewalls with inherent spring back), and discloses a substantially different invention from the claimed invention, and therefore cannot properly be used to establish a prima facie case of obviousness. Accordingly, Applicant respectfully requests reconsideration and withdrawal of all rejections under 35 U.S.C. §103(a), which Applicant considers to be overcome.

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In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is cordially requested to telephone the undersigned.

In the event the Commissioner of Patents and Trademarks deems additional fees to be due in connection with this application, Applicants' attorney hereby authorizes that such fees be charged to Deposit Account No. 06-1130.

Respectfully submitted,

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